



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2005

Mr. Brody Shanklin
Assistant District Attorney
Denton County
P.O. Box 2850
Denton, Texas 76202

OR2005-04032

Dear Mr. Shanklin:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 223844.

Denton County (the "county") received a request for: 1) an electronic copy of any recorded real property documents and indices; 2) a copy of any contracts over the preceding two years between the county and Affiliated Computer Services, Inc. ("ACS"); and 3) all correspondence over the same period between the county and ACS. You do not claim that the information responsive to the first portion of the request is excepted from public disclosure and inform us that the county is "in the process of providing [the requestor's] attorney a written statement of costs." You also state that the county maintains no information that is responsive to the third portion of the request.¹ However, you raise section 552.110 of the Government Code as a possible exception to disclosure of information responsive to the second portion of the request but make no arguments regarding this exception. You state, and provide documentation showing, that you have notified the ACS of the county's receipt of the request for information and of their right to submit arguments to this office as to why the requested information should not be released to the requestor. See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to

¹We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economics Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, ACS has not submitted comments to this office in response to the section 552.305 notice; therefore, we have no basis to conclude that the company has a proprietary interest in the submitted information. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). We therefore conclude the county must release the submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "L. Joseph James".

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/seg

Ref: ID# 223844

Enc. Submitted documents

c: Mr. Jason Smith
Smith Business Solutions
4525 Palm Valley
Plano, Texas 75024
(w/o enclosures)